

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WESTCHESTER FIRE INSURANCE COMPANY,

Plaintiff,

-against-

MEMORANDUM & ORDER
14-CV-5747 (JS) (AKT)

ANNEX GENERAL CONTRACTING, INC. and
STEVEN J. SAGGESE,

Defendants.

-----X
APPEARANCES

For Plaintiff:

Richard B. Demas, Esq.
Susanna Requets, Esq.
Gottesman, Wolgel, Flynn,
Weinberg & Lee, P.C.
11 Hanover Square
New York, New York 10005

For Defendants:

Stephen J. Saggese

Steven J. Saggese, pro se
3856 Nansemond Parkway
Suffolk, VA 23435

Annex General

Contracting, Inc.

No appearances.

SEYBERT, District Judge:

Pending before the Court is plaintiff's motion for summary judgment (Docket Entry 35) and Magistrate Judge A. Kathleen Tomlinson's Report and Recommendation ("R&R"), recommending that this Court grant plaintiff's motion, (Docket Entry 44). For the following reasons, the Court ADOPTS Judge Tomlinson's R&R in its entirety.

BACKGROUND

Plaintiff Westchester Fire Insurance Company ("Plaintiff") commenced this action on October 1, 2014 against defendants Annex General Contracting, Inc. ("Annex") and Steven J. Saggese ("Saggese," and together with Annex, "Defendants"). Plaintiff alleges that it is entitled to recover bond losses, fees, costs, and expenses, which Plaintiff incurred serving as a surety on behalf of Annex. (See generally Complaint.)

On December 15, 2015, Plaintiff moved for summary judgment (Docket Entry 35), and on February 19, 2016, the undersigned referred Plaintiff's motion to Judge Tomlinson for an R&R on whether the motion should be granted, (Docket Entry 41).

On July 15, 2016, Judge Tomlinson issued her R&R. (R&R, Docket Entry 44.) The R&R recommends that the Court grant Plaintiff's motion for summary judgment against defendant Saggese and issue a default judgment against defendant Annex. (R&R at 44.) The R&R further recommends that judgment be entered on behalf of Plaintiff against Defendants in the amount of \$639,574.73, and that Plaintiff be awarded prejudgment interest calculated by the Clerk of the Court at a rate of 9% per annum from June 14, 2014 through the date of the judgment. (R&R at 44.) Finally, the R&R recommends that the Court give Plaintiff an opportunity to submit additional documentation to support of its request for attorneys' fees. (R&R at 44.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Tomlinson's R&R (Docket Entry 44) is ADOPTED in its entirety and Plaintiff's motion for summary judgment (Docket Entry 35) is GRANTED. The Court is directed to enter judgment in favor of Plaintiff and against Defendants in the amount of \$639,574.73, plus prejudgment interest at a rate of 9% per annum from June 14, 2014 through the date judgment is entered. Plaintiff's request for attorney fees is DENIED WITHOUT PREJUDICE,

however, Plaintiff is invited to file an additional motion requesting attorney fees that is supported by adequate documentation, as detailed in Judge Tomlinson's R&R. Plaintiff is directed to serve a copy of this Memorandum & Order on Defendants and file proof of service. The Clerk of the Court is further directed to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: August 15, 2016
Central Islip, New York